

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF:)	Case No. 11-86
)	
Robert Burke,)	License No. 307997
)	
Respondent.)	Order Regarding
)	Proposed Decision

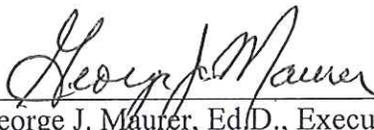
This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. The Hearing was held before Administrative Law Judge Margaret LaMarche on May 30, 2012. On June 15, 2012, Judge LaMarche issued a proposed decision. The proposed decision was served upon the Respondent and the Board.

The Board considered the proposed decision at its regular meeting on June 22, 2012. After examining the proposed decision, the Board unanimously approved a motion not to initiate review of the proposed decision.

ORDER

THEREFORE, the Proposed Decision in this matter will stand as the Board's final ruling in this matter unless a timely appeal from the proposed decision is initiated by one of the parties, pursuant to Board rule 282 I.A.C. 11.28(1).

Dated this 22nd day of June, 2012.



George J. Maurer, Ed/D., Executive Director
On behalf of the Board

Copies to:

Julie Bussanmas, Attorney for State

JUN 18 2012

IOWA BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF) DIA NO. 12BEE014
) CASE NO. 11-86
ROBERT BURKE)
)
RESPONDENT) PROPOSED DECISION

On April 10, 2012, the Iowa Board of Educational Examiners (Board) issued a Notice of Hearing and Statement of Charges against Robert Burke (Respondent), which alleged commission of a criminal offense, in violation of 282 IAC 25.3(1)(b)(2). The hearing was held on May 30, 2012 at 9:15 a.m. in a third floor hearing room, Wallace State Office Building, Des Moines, Iowa. The state was represented by Assistant Attorney General Julie Bussanmas. Respondent Robert Burke acknowledged receipt of the Notice of Hearing and Statement of Charges on April 13, 2012 but did not appear for hearing. (State Exhibit 2).

THE RECORD

The record includes the May 4, 2012 Order extending the 180 day time period and State Exhibits 1-5 (See Exhibit Index for description).

FINDINGS OF FACT

1. Robert Burke holds a Professional Administrator License (Folder #307997) with endorsements to serve as PK-8 Principal and Evaluator. Mr. Burke's license is currently active and expires on May 31, 2014. Mr. Burke also holds an expired Standard License and an expired Class B License. (State Exhibits 1, 4, p. 11)
2. On July 1, 2004, Robert Burke began employment with the Dubuque Community Schools as an elementary principal. (Exhibit 5, p. 15)
3. On June 7, 2011, Robert Burke was indicted by a federal grand jury on a charge of Receipt of Child Pornography, in violation of Title 18, United States Code, Sections 2252(a)(2) and 2252(b)(1). (Exhibit 5, p. 90)
On July 12, 2011, the federal grand jury returned a Superceding Indictment that charged Mr. Burke with seven counts relating to:

- the use and attempted use of minors under age 18 to engage in sexually explicit conduct for the purpose of creating visual depictions of such conduct,
- distributing the visual depictions using the Internet,
- receiving the visual depictions using the Internet, and
- knowingly possessing or attempting to possess the visual depictions.

(Exhibit 5, pp. 120-123)

4. On August 2, 2011, Robert Burke entered a voluntary plea of guilty to Count I of the Superceding Indictment. (Exhibit 5, pp. 131-157) Count I charged Mr. Burke as follows:

Between January 2011 and June 3, 2011, ...Robert Burke used and attempted to use minors under the age of 18 to engage in sexually explicit conduct (defined in 18 U.S.C. §2256(2)(A)(v) as including the "lascivious exhibition of the genitals or pubic area of any person") for the purpose of producing visual depictions of such conduct, by creating and attempting to create said visual depictions without the knowledge of the minors involved, and causing and attempting to cause said visual depictions to be produced using materials, namely, one or more cameras, memory cards, computers, and hard drives, that had previously been shipped and transported in interstate and foreign commerce. This was in violation of Title 18, United States code, Sections 2251(a) and 2251(e).

(Exhibit 5, pp. 120-121)

The plea agreement included the following stipulation of facts as the factual basis for the guilty plea and sentence:

A. In or between January 2011 and June 3, 2011, defendant used minors under the age of 18 to engage in sexually explicit conduct (defined in 18 U.S.C. §2256(2)(A)(v) as including the "lascivious exhibition of the genitals or pubic area of any person") for the purpose of producing visual depictions of such conduct, by creating said visual depictions without the knowledge of the minors involved, and causing said visual depictions to be produced

using cameras, memory cards, computers, and hard drives, that had been manufactured outside Iowa and that had been shipped and transported in interstate and foreign commerce.

B. In or between January 2011 and June 3, 2011, while he was principal at Sageville Elementary School in Dubuque County, Iowa, defendant used cameras, including hidden cameras in the school bathroom, to capture videos depicting the lascivious display of the genitals of male students at the school, including students who were under the age of 12. Defendant saved these videos on hard drives in his house in Dubuque.

(Exhibit 5, p. 138)

5. On November 10, 2011, the Executive Director for Human Resources for the Dubuque Community Schools filed a Complaint with the Board, alleging that Robert Burke had violated 282 IAC 25.3(1) (conviction of crimes, sexual or other immoral conduct with or toward a student or child). (Exhibit 4) The Board assigned the complaint to an investigator who obtained personnel information from the Dubuque Community School District and also obtained the federal court documents relating to Mr. Burke's criminal conviction. (Exhibit 5)

6. A sentencing hearing was held on November 21, 2011 in the United States District Court for the Northern District of Iowa. At that hearing, Robert Burke was committed to the custody of the United States Bureau of Prisons for a total term of 360 months (30 years), followed by supervised release for a term of 20 years. Mr. Burke was also fined \$25,000. (Exhibit 5, pp. 178-184)

7. On April 10, 2012, the Board issued its Notice of Hearing and Statement of Charges to Robert Burke. The notice scheduled the hearing for May 30, 2012. (Exhibit 1) Mr. Burke was served with the Notice of Hearing and Statement of Charges at the Federal Correctional Institution in Greenville, Illinois on April 13, 2012. (Exhibit 3) On April 18, 2012, Mr. Burke filed an Answer indicating that he was surrendering his Professional Administrator License and that he would not attend the hearing or be represented at hearing. (Exhibit 2) In response, the state sent Mr. Burke the Board's formal surrender of license form with waiver of rights to a hearing. However, Mr. Burke never returned a signed copy of the voluntary surrender. (Professional Statement of Julie Bussanmas)

CONCLUSIONS OF LAW

I. Failure to Appear

282 IAC 11.7(1) provides that a notice of hearing may be served by personal service, certified mail with return receipt requested, first-class mail, or publication, as provided in the Iowa Rules of Civil Procedure. Respondent Robert Burke acknowledged his receipt of the Notice of Hearing and Statement of Charges on April 13, 2012. (State Exhibits 1, 3)

282 IAC 11.23(1) provides that if a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party. Mr. Burke was properly served but did not appear for hearing, either in person or by telephone.

II. Conviction of Crime

The legislature has authorized the Iowa Board of Educational Examiners to adopt rules providing for the denial or revocation of a license upon the board's finding, by a preponderance of the evidence, that a person has been convicted of a crime.¹ In accordance with this statute, the Board has adopted a Code of Professional Conduct and Ethics at 282 IAC chapter 25, which includes a provision requiring license denial or revocation for certain listed offenses and authorizing license discipline for crimes not specifically listed.²

The disqualifying convictions listed in Iowa Code section 272.2(14)(a) and 282 IAC 25.3(1)(b)(1) include:

1. Any of the forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;
2. Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:
 - First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;
 - Lascivious acts with a child;
 - Assault with intent to commit sexual abuse

¹ Iowa Code section 272.2(14)(a)(2011).

² 282 IAC 25.3(1).

- Indecent contact with a child;
 - Sexual exploitation by a school counselor;
 - Lascivious conduct with a minor; or
 - Sexual exploitation by a school employee;
3. Incest involving a child as prohibited by Iowa Code section 726.2;
 4. Dissemination and exhibition of obscene materials to minors as prohibited by Iowa Code section 728.2; or
 5. Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.

All of the listed disqualifying offenses are state crimes, not federal crimes. Since Robert Burke's conviction under 18 U.S.C. sections 2251(a) and 2251(e) is a federal offense, it does not fall within the category of a "disqualifying" conviction. If the crime is not a disqualifying offense under the statute, the Board is required to consider the following factors in determining whether to deny or revoke a license:

- The nature and seriousness of the crime in relation to the position sought;
- The time elapsed since the crime was committed;
- The degree of rehabilitation which has taken place since the crime was committed;
- The likelihood that the person will commit the same crime again;
- The number of criminal convictions;
- Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.³

The preponderance of the evidence clearly established that Robert Burke violated 282 IAC 25.3(1)(b)(2) when he was convicted of the federal crime of Use and Attempted Use of Minors Under the Age of 18 to Engage in Sexually Explicit Conduct for the Purpose of Producing Visual Depictions of Such Conduct. The nature and seriousness of this recent crime, which involved multiple child victims, requires the Board to revoke his license as an administrator as well as any other expired practitioner licenses that he holds. Mr. Burke's crime was a shocking abuse of the trust placed in him as an administrator and building principal. This conviction should disqualify Mr. Burke from ever working with minors in any capacity in the future.

³ Iowa Code section 272.2(14)(a)(2011); 282 IAC 25.3(1)(b)(2).

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Iowa professional administrator license and all expired licenses (Folder No. 307997) issued to Respondent Robert Burke shall be PERMANENTLY REVOKED.

Dated this 15th day of June, 2012.

Margaret LaMarche

Margaret LaMarche
Administrative Law Judge
Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building-Third Floor
Des Moines, Iowa 50319

cc: Robert Burke, #11616-029, FCC Petersburg, Medium, P.O. Box 1000,
Petersburg, VA 238004 (CERTIFIED MAIL)

Julie Bussanmas, Assistant Attorney General, Iowa Department of Justice,
Hoover Building, 2nd Floor (LOCAL)

George J. Maurer, Ed.D., Executive Director, Iowa Board of Educational
Examiners, Grimes State Office Building (LOCAL)

Motion To Vacate Default

In accordance with 282 IAC 11.23(3), this decision becomes final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated within the time provided by rule 11.28(17A,272). A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion.

Appeal on the Merits

282 IAC 11.28 provides that a proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party to the decision who is adversely affected by serving a notice of appeal with the board within 30 days after issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS
OF THE STATE OF IOWA**

In the matter of)	Case No. 11-86 ⁶
)	License No. 307997
ROBERT BURKE,)	
)	NOTICE OF HEARING
Respondent.)	AND STATEMENT OF CHARGES

YOU ARE HEREBY NOTIFIED that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing will be held on Wednesday, May 30, 2012, before Administrative Law Judge Margaret LaMarche, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 9:00 a.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9th Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 9:00 a.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code [IAC] Chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 IAC 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the

request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 IAC 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Julie J. Bussanmas
Assistant Attorney General
Iowa Department of Justice
2nd Floor, Hoover State Office Building
Des Moines, Iowa 50319
Telephone (515) 281-5637.

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Dr. George J. Maurer, the Board's Executive Director at (515)281-5849 or to Assistant Attorney General Bussanmas at (515)281-5637.

B. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

7. Respondent is charged with commission of a criminal offense, in violation of Board rule 282 Iowa Admin. Code 25.3(1)(b)(2).

C. JURISDICTION AND LEGAL AUTHORITY

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 Iowa Admin. Code chapter 11.

D. FACTUAL CIRCUMSTANCES

9. Respondent holds a PROFESSIONAL ADMINISTRATOR LICENSE (FOLDER # 307997) with endorsements to serve as PK-8 Principal and Evaluator. Respondent's

license is current and will next expire on May 31, 2014. Respondent also holds an expired Standard License and an expired Class B License.

10. Respondent began employment with Dubuque Community Schools on July 1, 2004 as an elementary principal. Respondent has since been terminated.

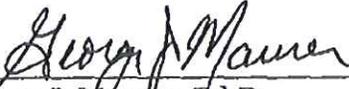
11. On November 10, 2011, the Board of Educational Examiners received a complaint against Respondent alleging various violations. On January 19, 2012, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

12. Respondent pled guilty in the United States District Court for the Northern District of Iowa to one count of Use and Attempted Use of Minors under the Age of 18 to Engage in Sexually Explicit Conduct for the Purpose of Producing Visual Depictions of Such Conduct, in violation of 18 U.S.C. §§ 2251(a) and 2251(e) and was sentenced to 360 months in federal prison. Further details are contained within the investigative file.

E. SETTLEMENT

13. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 Iowa Administrative Code 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 10th day of April, 2012.



George J. Maurer, Ed.D.
Executive Director
Iowa Board of Educational Examiners

Copies to:

Robert Burke, # 11616-029
FCI Greenville
Federal Correctional Institution
P.O. Box 5000
Greenville, IL 62246
RESPONDENT

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ATTORNEY FOR STATE